



BEALE & CO

CONSTRUCTION ENGINEERING & INFRASTRUCTURE

# A practical perspective on arbitration

Sadaff Habib, Senior Associate

## Webinar outline

1. Your arbitration agreement- things to think about
2. Benefits of different institutional rules
3. Interim remedies in arbitration
4. Enforcing your award
5. Concluding remarks

## Your arbitration agreement- things to think about

- + Your arbitration agreement is a stand alone agreement
- + When is arbitration suitable?
  - Not every dispute is arbitrable
  - Different States have their own social, political and economic policy
  - The Prestige oil spill
  - Examples under common law of disputes that are now arbitrable
  - Position in the UAE

## Your arbitration agreement- things to think about

### + Value of potential claims

- Multi million commercial or construction contracts
- Small value disputes

### + Avoid pathologies

- Project managers/ commercial team
- Referring to institutions that do not exist
- Preconditions to arbitrations
- Crystallising your dispute

## Your arbitration agreement- things to think about

### + The Seat

- Not to be taken lightly
- Support or intervention
- Challenge
- Recognition and Enforcement

### + Number of arbitrators and language



## Benefits of different institutional rules

- + Institutional or ad hoc arbitration
- + Popular institutions- the ICC, LCIA, DIAC and DIFC-LCIA
- + Factors to consider:
  - Cost
  - Duration
  - Appointment and challenges of arbitrators
  - Arbitrator's power to award costs
  - Review of the final award



## Benefits of different institutional rules- Cost

- + ICC- most expensive
- + LCIA- comparatively cheaper
- + DIAC- comparatively cheaper to ICC and LCIA
- + DIFC-LCIA- similar to LCIA in calculating administration fees

## Benefits of different institutional rules- Duration

- + ICC Rules- may take longer; terms of reference and scrutiny of awards
- + Time limit to issue the final award under the different rules
- + On average 12-24 months
  - Median duration of an LCIA arbitration is 16 months

Types of Tribunal	Mean duration (months)	Median duration (months)
All tribunals	20	16
Sole arbitrator	18.5	15
Three member tribunal	21	19



## Benefits of different institutional rules- appointment of and challenges to arbitrators

### + ICC Rules

- Challenge within 30 days
- Rarely successful

### + LCIA/ DIFC-LCIA Rules

- Shorter challenge period of 14 days
- LCIA database

### + DIAC Rules

- Arbitration agreement
- Challenge within 15 days
- Comparatively higher rate of challenges

## Benefits of different institutional rules- arbitrator power to award costs

- + ICC Rules, LCIA, DIFC-LCIA Rules- discretion to award costs
- + DIAC Rules- only arbitration costs
- + New DIAC Rules?



## Benefits of different institutional rules- review of the final award

- + ICC Rules- scrutiny of ICC arbitrations
- + No similar mechanism in the LCIA, DIAC and the DIFC-LCIA Rules
- + Concluding remarks



## Interim remedies in arbitration

- + The tribunal and national courts
- + The UK
  - The Arbitration Act 1996
  - When do English courts accept jurisdiction
- + The UAE
  - The new Arbitration Law
  - The Court's power

## Interim remedies in arbitration

- + Other jurisdictions such as the KSA
  - Hardline position
  - New KSA Arbitration Law

## Enforcing your award

- + One of the key advantages of arbitration
- + Informal enforcement
- + Formal enforcement



## Enforcing your award

- + Grounds to challenge an award
- + Attachment of a private jet plane
- + Arbitration default insurance?

## Concluding Remarks

- + Get your arbitration agreement right!

